# Appendix E
# SOFTWARE MAINTENANCE AGREEMENT

DIR-SDD-2132

THIS SOFTWARE MAINTENANCE AGREEMENT ("Agreement") is made as of the Effective Date by and between Image API, Inc., with offices located at 2002 Old St. Augustine Road, Bldg. D, Tallahassee, Florida 32301 ("Vendor") and [Name of Customer] with facilities located at [Address of Customer] ("Customer").

## W I T N E S E T H:

WHEREAS, Vendor is a Florida corporation formed for the purpose of Electronic Document Management Software, Production Services; and  Technical Services, and

WHEREAS, Vendor owns certain computer software for Electronic Document Management ("AXIOM PRO"); and

WHEREAS, Customer and Vendor have executed that certain Software License of even date herewith under which Customer obtained the right to use AXIOM PRO ("Software License"); and

WHEREAS, Customer desires Vendor to provide Customer with certain maintenance, training and user support services for AXIOM PRO.

NOW, THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, Vendor and Customer hereby agree as follows:

## ARTICLE I:  RECITALS AND DEFINITIONS

Section 1.01 -- Recitals:  The above recitals and identification of parties is true and correct.

Section 1.02 -- Definitions:  The following definitions shall apply:

(1)  Acceptance Date:  The term "Acceptance Date" shall mean the date an Enhancement or Update is accepted by Customer as provided under this Agreement.

(2)  Access:  The term "access" and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise the Software.

(3)  Cancellation Notice:  The term "Cancellation Notice" shall mean that written notice sent by one party to this Agreement to the other party to this Agreement seeking to cancel this Agreement because of breach by such other party.

(4)  Computer:  The term "Computer" shall have the same meaning as set forth for the term "Computer" in the Software License.

(5)  Customer:  The term "Customer" shall mean [Name of Customer].

(6)  Defect:  The term "Defect" shall mean programming or software design errors that substantially impair the performance, utility and functionality of the Software on the Computer as represented in the Documentation.

(7)  Documentation:  The term "Documentation" shall mean that certain AXIOM PRO User's Guide, including all updates thereto.

(8)  Effective Date:  The term "Effective Date" shall mean the date this Agreement is signed by Vendor.

(9)  Enhancement:  The term "Enhancement" shall mean executable code for

modifications to the Software that improve or expand the functionality or features of the Software.

(10)Implement:  The term "implement" and variants thereof (including, but not limited to, the terms "implementation", "implementing" and "implemented") shall mean to load and make available for user access.

(11)Maintenance Fee:  The term "Maintenance Fee" shall mean that certain fee charged to Customer by Vendor for maintenance, support and training services as provided under this Agreement.

(12)Maintenance Term:  The term "Maintenance Term" shall mean a period of time starting with the Effective Date and continuing one year thereafter, except as extended as provided under this Agreement.

(13)Software:  The term "Software" shall mean the executable code for that certain software commonly referred to as AXIOM PRO as set forth under the Software License, including Enhancements and Updates thereto.

(14)Update:  The term "Update" shall mean executable code for modifications to the Software that improve or expand the performance of the Software on the Computer.

(15)Defect Notice:  The term "Defect Notice" shall mean that certain written notice from Customer to Vendor identifying discrepancies between the actual performance of an Enhancement or Update and the performance represented in the Documentation describing the purpose, utility or function of such Enhancement or Update.

(16)Unauthorized Access:  The term "Unauthorized Access" shall mean any access to the Software or Documentation except for the exclusive purposes of Electronic Document Management, demonstrating the performance, utility and functions of the Software, and training employees of Licensee in the use of the Software.

(17)Unauthorized User:  The term "Unauthorized User" shall mean any individual who accesses the Software or Documentation

except for employees authorized by Licensee to access the Software for the purposes of Electronic Document Management being provided by Licensee, demonstrating the performance, utility and functions of the Software and training employees of Licensee in the use of the Software.

## ARTICLE II:  MAINTENANCE SERVICES

Section 2.01 -- Defect Resolution:  Vendor shall correct any Defects in the Software within a reasonable time after such Defect is reported to Vendor by Customer, as follows:

(1)  Problem Reporting:  Upon discovering a Defect, Customer shall report the Defect ("Service Request").

(2)  Telephone Support:  Within eight (8) hours after receiving a Service Request, Vendor shall provide telephone support in the form of consultations, assistance and advice concerning use of the Software and correction of the Defect ("Telephone Support").

(3)  Off-site Support:  If a Defect is not corrected through Telephone Support within forty eight (48) hours after receiving a Service Request, Vendor shall conduct tests and analyses at Vendor's facility designed to reproduce, isolate and correct the Defect using data and information provided to Vendor by Customer ("Off-site Support").

(4)  On-site Support:  If a Defect is not corrected by Vendor through Off-site Support within a reasonable time after receiving a Service Request, Vendor personnel shall visit Customer's facility for the purpose of correcting the Defect ("On-site Services").  If the Defect is not corrected within a reasonable time after commencing such On-site Services, Vendor shall implement work around processes designed to minimize the impact of the Defect.

Section 2.02 -- Enhancements:  Vendor shall implement all Enhancements and Updates on the Computer within thirty (30) days after the date that such Enhancement or Update is released by Vendor.  Along with such Enhancements and Updates, Vendor shall provide Customer with documentation

describing the purpose, function and utility of such Enhancement or Update.

Section 2.03 -- Acceptance Testing: Upon completing implementation of an Enhancement or Update, Vendor shall demonstrate the Enhancement or Update to Customer. Upon completing demonstration of the Enhancement or Update, the Enhancement or Update shall be deemed delivered to Customer. The Enhancement or Update shall be deemed accepted by Customer thirty days after delivery of the Enhancement or Update unless Defect Notice is received by Vendor by such thirtieth day. Upon receiving Defect Notice from Customer, Vendor shall review the asserted discrepancy to determine if the discrepancy is valid. If, in the reasonable professional judgment of Vendor the discrepancy is valid, Vendor shall correct the discrepancy and resubmit the Enhancement or Update for acceptance by Customer. If, in the reasonable professional judgment of Vendor such discrepancy is not valid, Vendor shall submit to Customer a written explanation of the reasons why such asserted discrepancy is not valid. The written explanation of Vendor set forth herein shall be deemed accepted by Customer within ten days after Customer's receipt of the written explanation unless Vendor receives from Customer written notice rejecting such explanation within such ten day period, in which case the Enhancement or Update shall not be implemented. Upon receipt of Defect Notice from Customer by Vendor as set forth above, the Enhancement or Update shall be deemed accepted by Customer except as to the discrepancies specified in the Defect Notice.

## ARTICLE III: CUSTOMER SUPPORT

Section 3.01 -- Customer Consultations: Vendor shall provide Customer with telephone consultations in answering questions concerning use of the Software. All such telephone consultations shall be subject to the discretion of Vendor.

Section 3.02 -- Program Modifications: Upon discovering a desired modification for the Software, Customer may request implementation of the modification. Any such request shall be submitted to Vendor in writing. Implementation of any such modification shall be subject to the sole and exclusive discretion of Vendor. Any service provided by Vendor in implementing any such modification shall be at the time and material rates of Vendor prevailing at the time such services are rendered.

Section 3.03 -- Customer Cooperation: Customer shall cooperate with Vendor by granting unrestricted access to the Software and the Computer, and providing data and information reasonably required by Vendor to correct a Defect. Customer shall provide Vendor with internet or other high speed communications access to the Computer and the Software.

Section 3.04 -- Schedule Restrictions: The services to be provided by Vendor hereunder shall be performed only during the hours of 8:30 a.m. through 5:00 p.m., Eastern Time, Monday through Friday (excluding holidays).

Section 3.05 -- Software Training: During the first thirty days after delivery of the Software, Vendor shall provide on-site individual training and customer support to Customer for a fee. Such on-site training shall include individualized instruction and training on using and operating the Software for persons designated by Customer. Such training shall include instructions and guidelines on performing all of the functions and processes described in the Documentation.

Section 3.06 -- Enhancement/Update Training: After implementing an Enhancement or Update, Vendor shall provide instructions and guidelines on the use of such Enhancement or Update. Any additional training will be on a fee basis.

## ARTICLE IV: LICENSING

Section 4.01 -- License Grant: Vendor hereby grants to Customer a non-exclusive and non-transferable license to use the Enhancements and Updates and Documentation for the Maintenance Term.

Section 4.02 -- Risk of Loss: Customer assumes risk of loss to an Enhancement or Update as of the Acceptance Date for such Enhancement or Update.

Section 4.03 -- Authorized Use: Customer shall prevent Unauthorized Users from accessing the Software. Customer shall prevent Unauthorized Access to the Software.

Section 4.04 -- Source Code: Vendor shall maintain a current copy of the source code for the Software.

## ARTICLE V: PAYMENT

Section 5.01 -- Maintenance Fee: Customer shall pay Vendor a Maintenance Fee as of the Effective Date and each anniversary of the Effective Date. Vendor shall establish the Maintenance Fee for a Maintenance Term by written notice to Customer at least thirty days in advance of the first day of such Maintenance Term. Fees shall be set forth in Appendix C Pricing Index of DIR Contract No. DIR-SDD-2132.

Section 5.02 -- Technical Services Fee: Services provided Customer by Vendor which are not provided under this Agreement shall be invoiced to Customer by Vendor at fees set forth in Appendix C Pricing Index of DIR Contract No. DIR-SDD-2132. All travel shall be pre-approved by Customer and shall be reimbursed in accordance with the rates set forth in the State of Texas travel regulations as detailed in Section 4.G. of DIR Contract No. DIR-SDD-2132.

Section 5.03 -- Taxes: Taxes shall be in accordance with Section 4.F of DIR Contract No. DIR-SDD-2132.

Section 5.04 -- Invoicing and Payment: Invoicing and Payment shall be in accordance with Section 7. Purchase Orders, Invoices and Payments of Appendix A of DIR Contract No. DIR-SDD-2132.

## ARTICLE VI: TERMINATION

Section 6.01 -- Termination Limitations: This Agreement may only be terminated as provided under Section 10.B. Termination of DIR Contract No. DIR-SDD-2132.

Section 6.02 -- Term and Renewal: This Agreement shall be valid for the Maintenance Term except as extended hereunder. The Maintenance Term shall renew for one year on each anniversary of the Effective Date with thirty (30) days prior written notice provided to the Customer.

Section 6.03 -- Termination: Termination shall be in accordance with Section 10.B. Termination of Appendix A of the DIR Contract No. DIR-SDD-2132.

Section 6.04 -- Refund in the Event of Termination: If this Agreement is terminated by Customer, Vendor shall refund any maintenance fees paid by Customer before the termination date for maintenance services after the termination date. For purposes of this Article the term "termination date" shall mean the effective date of termination as specified in the notice of termination, or if no such termination date is specified the termination date shall be deemed to be the date customer delivers termination notice to Vendor.

## ARTICLE VII -- WARRANTY

Section 7.01 -- Maintenance Warranty: Vendor warrants that Vendor shall maintain the Software free from all Defects and that the Software shall conform to the performance capabilities, functions and other standards applicable thereto as set forth in this Agreement and the Software License. Vendor warrants that all Enhancements and Updates implemented by Vendor shall be fully compatible with each other, the Software and the Computer.

Section 7.02 -- Service Warranty: The services to be provided by Vendor hereunder shall be performed in a timely and professional manner by qualified software personnel familiar with the Software and shall conform to the standards generally observed in the industry for similar services. Such services shall be in compliance with all applicable laws, rules, regulations or orders.

Section 7.03 -- Software Modifications:  If the Software is modified by any party other than Vendor, Vendor shall be discharged from any further obligations under this Agreement.  Any such discharge shall not affect the obligations of Customer that shall be continuing and binding despite such discharge.

Section 7.04 -- Original Development:  Vendor represents and warrants that the Enhancements and Updates shall not infringe upon or violate any patent, copyright, trade secret or other property right of any third party.

Section 7.05: WARRANTY LIMITATION:  THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY.

## ARTICLE VIII:   INTELLECTUAL PROPERTY

Section 8.01 -- Ownership and Title:  Title to the Enhancements, Updates and Documentation, including ownership rights to patents, copyrights, trademarks and trade secrets therein shall be the exclusive property of Vendor.

Section 8.02 -- Reverse Engineering:  Customer shall not reverse engineer an Enhancement or Update.

Section 8.03 -- Confidentiality:  Customer hereby acknowledges that the Enhancements, Updates, and Documentation may contain information that may be trade secret and proprietary to Vendor.  To the extent authorized by the Texas Public Information Act, Customer hereby agrees not to disclose such information except to persons and organizations expressly authorized by Vendor to receive such information.  Customer shall not remove or alter any copyright notices or proprietary legends affixed by Vendor to such Enhancements, Updates or Documentation.

Section 8.04 -- Copies:  Vendor shall make available to Customer an additional copy of the Enhancements, Updates and Documentation for back-up use on the Computer.  Customer shall not copy Enhancements, Updates or Documentation and shall not allow the Enhancements, Updates or Documentation to be copied without the prior written consent of Vendor.

Section 8.05 -- Limitation of Damages:  Force Majeure terms are detailed in Section 10.C. of Appendix A of the DIR Contract No. DIR-SDD-2132.

Section 8.06 -- Continuation:  The terms and provisions of this Article VIII shall survive termination of this Agreement.

## ARTICLE IX:  MISCELLANEOUS

Section 9.01 -- Assignments:  Assignments shall be in accordance with Section 4.D. of Appendix A of the DIR Contract No. DIR-SDD-2132.

Section 9.02 -- Entire Agreement:  Excepting the Software License, the DIR Contract No. DIR-SDD-2132 and this Agreement contain the entire understanding of the parties and supersede previous verbal and written agreements between the parties concerning maintenance, user support and training services for the Software. In the event of a conflict between this Agreement and the DIR Contract No. DIR-SDD-2132, the DIR Contract controls.

Section 9.03 -- Equitable Remedies:  The parties hereby acknowledge that damages at law may be an inadequate remedy.  Therefore, Customer shall have the right of specific performance, injunction or other equitable remedy in the event of a breach of this Agreement by Vendor.  In no event shall any damages or other payments exceed the prorated license cost over a three year period.

Section 9.04 -- Amendments and Modifications:  Waivers, alterations, modifications or amendments of a provision of

this Agreement shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by an authorized representative of both parties.

Section 9.05 -- Severability:  If a provision of this Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

Section 9.06 -- Captions:  The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

Section 9.07 -- Counterparts:  This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 9.08 -- Governing Law:  This Agreement is governed by the laws of the State of Texas.  Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

Section 9.09 -- Notice:  Notices shall be in accordance with Section 11.A. of Appendix A of the DIR Contract No. DIR-SDD-2132.

Section 9.10 -- Pronouns/Gender:  Pronouns shall refer to the masculine, feminine, neuter, singular or plural, as the context shall require.

Section 9.11 -- Bankruptcy:  If either party must institute, defend, appear or attend a bankruptcy proceeding as a result of the filing of bankruptcy by the other party, fees and expenses shall be born by the filing party.  If either party has a bankruptcy proceeding filed against it, the other party shall recover attorney fees, expert witness fees, and other costs incurred by such other party in connection with the bankruptcy proceeding, hearing or trial.

Section 9.12 -- Waiver:  Waiver of breach of this Agreement shall not constitute waiver of another breach.  Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision.

Section 9.13 -- Relationship of the Parties:  It is agreed that the relationship of the parties is primarily that of Customer and Vendor.  Nothing herein shall be construed as creating partnership, employment relationship, or agency relationship between the parties, or as authorizing either party to act as agent for the other.  Each party maintains its separate identity.

Section 9.14 – Dispute Resolution:  Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by dispute resolution in accordance with Section 10.A. of Appendix A of the DIR Contract No. DIR-SDD-2132. .

Section 9.15 -- Assurances:  Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to each other under this Agreement are true, correct and accurate as of the date of this Agreement to the best of their knowledge.

Section 9.16 -- Litigation Expense:  In the event of litigation arising out of this Agreement, each party shall pay its own costs and expenses of litigation.


IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

For Licensor

WITNESS:                                    Image API, Inc.


_____        _____
Name                                        Name and Title


_____        _____
Date                                        Date


For Licensee




_____
Name and Title


_____
Date